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Nos. 05-908 & 05-915

IN THE

Supreme Court of the United States

Parents Involved in Community Schools,
Petitioner,
v.
Seattle School District No. 1, *et al.*,
Respondents.

Chrystal D. Meredith, Custodial Parent and Next Friend to Joshua Ryan McDonald,
Petitioner,
v.
Jefferson County Board of Education, *et al.*,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Ninth and Sixth Circuits

Brief of *Amicus Curiae* Walt Sherlin In Support of Respondents

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INTEREST OF AMICUS[1]

Walt Sherlin worked for thirty years in the Wake County public schools, first in the former Raleigh city system, where he started as a teacher in 1974, and then for the consolidated city-county Wake County Public School System, now the 22nd largest school system in the nation. During his tenure, Mr. Sherlin served for many years as an administrator, first at the school level and then in central administration. In 1999-2000, while serving as Lead Area Assistant Superintendent, Mr. Sherlin was responsible for student assignment. During that time, Mr. Sherlin and a team of other administrators, school board members and the district's legal counsel began discussions about changing the district's student assignment plan from a race-conscious plan to a race-neutral plan. On January 10, 2000, the school board adopted a new plan that eliminated the use of race in student assignment decisions. Mr. Sherlin had chief responsibility for the implementation of the new, race-neutral plan which governed pupil assignments beginning in the 2000-2001 school year.

Petitioners' *amici* point to Wake County's current plan—which sets targets capping the number of low-income students per school—as an example of a race-neutral way to achieve racial diversity. Although Mr. Sherlin is proud of the success of the Wake County plan, he believes it is important to explain that racial diversity is not a goal of the Wake County assignment plan, that the district has experienced a decline in racial diversity under the current plan, and that, insofar as the plan has fostered some degree of racial diversity in Wake County schools, many school districts, including most North Carolina school districts, cannot expect to achieve similar

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[1] All parties have filed letters of consent to the filing of briefs *amicus curiae* in these cases. No counsel for a party authored this brief, in whole or in part, and no one other than *amicus* or his counsel contributed to the cost of the brief's preparation or submission.

racial diversity through the use of a socio-economic status (SES) plan.

SUMMARY OF ARGUMENT

As part of their argument that school districts have no legitimate need to use narrowly tailored race-conscious student assignment plans to achieve racial diversity in public schools, petitioners' *amici* note that several school districts have successfully implemented race-neutral school assignment plans. *E.g.*, Br. of *Amicus Curiae* United States (U.S. Br.) in *Parents Involved in Community Schools* v. *Seattle School District No. 1*, 05-908, at 25; U.S. Br. in *Meredith* v. *Jefferson County Board of Education*, 05-915, at 22. The Wake County Public School System ("Wake County") is one of the districts featured prominently in the studies cited by petitioners' *amici*.

Wake County's school assignment plan was designed to promote student achievement, not racial diversity. The plan, which considers students' socio-economic status and academic performance—and does not consider students' race—has been very successful at improving student achievement. It has also been fairly successful at maintaining racial diversity, even though racial diversity was not a sought-after goal of the plan. Because of Wake County's particular demographic characteristics, the substantial majority of its low-income students are minorities and the district's efforts to integrate based on socio-economic status have necessarily led to some correlative racial integration.

Nevertheless, racial diversity in Wake County schools has declined since the district stopped using a voluntary, race-conscious desegregation plan in favor of a race-neutral assignment plan. Moreover, should Wake County's student population shift to include more low-income white students, its assignment policy cannot ensure that the district will maintain racial diversity. Simply put, Wake County's system is not a helpful model for school districts that wish actively to

encourage racial diversity through the school assignment process, particularly where those districts do not share Wake County's unique demographics.

ARGUMENT

I. The Wake County School System No Longer Uses Race as a Factor in School Assignment Decisions

As a result of years of pressure from the United States Department of Health, Education, and Welfare (HEW), in 1976 the Raleigh City Schools merged with the Wake County School System to expedite racial integration of the schools in the county. In 1982, again under pressure from HEW, the merged Wake County system adopted a voluntary desegregation plan. Office for Civil Rights, U.S. Dep't of Educ., *Achieving Diversity: Race-Neutral Alternatives in American Education* 66, 69 (2004). Under that plan, each school was required to have a minority enrollment between 15% and 45%, and the district created programs, including magnet schools, to encourage further voluntary desegregation. Todd Silberman, *Wake County Schools: A Question of Balance*, DIVIDED WE FAIL: COMING TOGETHER THROUGH PUBLIC SCHOOL CHOICE 147 (2002), *available at* http:// www.tcf.org/Publications/Education/Silberman.pdf; Susan Flinspach & Karen Banks, *Moving Beyond Race*, *in* SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK? 265-67 (Jack Boger & Gary Orfield eds., 2005). As a result of these voluntary desegregation efforts, by the late 1990's, Wake County enjoyed a relatively well-integrated school system.[2]

Although Wake County's race-conscious assignment policy never faced a serious legal challenge, challenges elsewhere, like those in *Tuttle* v. *Arlington County School Board*, 195

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[2] In 1999, 70% of the nation's black students attended schools that were predominantly minority, while only 21% of Wake County's black students attended schools with a minority enrollment over 50%. Silberman, *supra*, at 149.

F.3d 698 (4th Cir. 1999), *Eisenberg* v. *Montgomery County Public Schools*, 197 F.3d 123 (4th Cir. 1999), and the *Belk* litigation in Charlotte, North Carolina, *see Belk* v. *Charlotte-Mecklenburg Board of Education*, 269 F.3d 305 (4th Cir. 2001), cert. denied, 535 U.S. 986 (2002), led Wake County school officials to revisit the district's assignment policy. Silberman, *supra*, at 143-44.

In 2000, Wake County adopted a new assignment policy that eliminated race from consideration. The new policy establishes goals that no more than 40% of a school's total enrollment will be comprised of students eligible for free-and-reduced-price lunch ("FRL") and no more than 25% of its enrollment will be comprised of students performing below grade level on the state's end-of-year exams. *Student Assignment Process*, Wake County Public School System website at http://www.wcpss.net/growth-management/student-assign-process.html (last visited October 4, 2006). Significantly, the current plan was designed solely to improve student achievement. *Id.* Wake County's current assignment policy therefore differs markedly from the voluntary desegregation plan it followed from 1982 through 1999. The purpose of the voluntary desegregation plan was to achieve racial diversity in the public schools, while the current policy focuses on improved student performance..

II. Wake County's Current Assignment Plan Has Maintained Some Racial Diversity, But This Is A Result of Wake County's Unique Characteristics and Is Not Necessarily Replicable

A. Racial diversity is a coincidental by-product of Wake County's current school assignment plan

Under the current plan, Wake County's schools remain relatively racially diverse, often falling within the 15% to 45% minority enrollment range required under the former

voluntary desegregation plan.[3] Flinspach & Banks, *supra*, at 275. Although students attending Wake County schools have likely benefited from the multi-racial and multi-cultural competencies gained from attending racially diverse schools,[4] this result was a consequence of the plan, but not its objective. Wake County has maintained racial diversity under its current assignment policy because, although its overall rate of poverty is the lowest in the state[5], in Wake County, African-American and Latino students are nearly ten times more likely to be eligible for FRL than white students.[6] Put simply, Wake County has relatively few white students who come from low-income families and relatively few African-American and Latino students who come from more affluent families.

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[3] By all accounts, student performance has improved across all demographic categories (*e.g.*, students receiving FRL, African-Americans, etc.) under the new plan. Office for Civil Rights, U.S. Dep't of Educ., *Achieving Diversity: Race-Neutral Alternatives in American Education* 68 (2004).

[4] Indeed, the Wake County schools recognize the benefits of diversity, even though the current assignment policy was not designed to achieve that goal. *Student Assignment Process*, Wake County Public School System website, at http://www.wcpss.net/growth-management/student-assign-process.html (last visited October 4, 2006) ("While the school district believes strongly that racial diversity within its schools enhance the education of all students, *race is not a factor* in assignment of students.") (emphasis in original).

[5] UNITED STATES CENSUS BUREAU, Census 2000 Summary File 3 at http://www.census.gov (last visited Oct. 6, 2006)

[6] In the 2000-2001 academic year, the first of Wake County's current assignment plan, only 5% of white students were eligible for FRL, while almost 50% of black and Latino students qualify for FRL. Flinspach & Banks, *supra*, at 275.

Despite Wake County's overwhelming correlation of race with family income, Wake County's schools are more socio-economically diverse than they are racially diverse, and that trend is increasing. Flinspach & Banks, supra, at 276 (noting that under the new assignment plan Wake County is maintaining racially desegregated schools, "albeit at a lower rate than [under the voluntary desegregation plan]"). For example, in 2003, 39% of African-American students in Wake County attended a school that had 50% or more minority enrollment,[7] almost double the 21% of African American students attending such a school under the voluntary desegregation plan in 1999. *see* Silberman, *supra*, at 149.

B. Racially diverse schools are not an inevitable by-product of Wake County's assignment plan

Since Wake County considers only diversity in income and achievement when making assignment decisions, nothing in the plan will prevent socio-economically diverse, but racially-homogenous schools. Because Wake County's black students are currently ten times more likely to be eligible for FRL, *see supra* at 5, economic integration has naturally resulted in racial integration as well.[8] However, if the district's demographics shift and more low-income white students enroll, racial diversity will no longer be a by-product of the assignment plan.

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[7] Gary Orfield & Chungmei Lee, *Why Segregation Matters: Poverty and Educational Inequality* 39 (January 2005), *available at* http://www.civilrightsproject.harvard.edu/research/deseg/Why_Segreg_Matters.pdf (last visited Oct 5, 2006)

[8] This happens because of the high correlation between FRL eligibility and race: most of the students reassigned away from "high-poverty" schools in Wake County are likely to be black, and the schools to which they are likely to be assigned, that have disproportionately low numbers of "poor" children, are likely to be overwhelmingly white.

C. Other districts across North Carolina would not be racially diverse under Wake County's assignment plan

Wake County's demographic profile, which includes convergence of a low family poverty rate with a significant racial disparity between poor and non-poor families, is unusual within the State of North Carolina. According to the latest data available from the U.S. Census Bureau,[9] Wake County had the lowest rate of family poverty (5.29%) among the State's one hundred counties. In addition, only 11.9% of Wake County's poor families had a white head of household, while 88.1% of poor Wake County families had a non-white head of household.

While neither of these characteristics, standing alone, is unique in North Carolina, their convergence in one county is rare. For example, nearly one-half of North Carolina counties (48 of 100) had a family poverty rate below 10%, and in 23 of the State's majority-white counties, at least 85% of poor families were non-white. Yet, only six North Carolina counties, including Wake County, share both characteristics. Because only six counties in the State have low poverty coupled with a very high concentration of minorities among its poor, Wake County's method of student assignment could be expected to achieve similar success with promoting racial diversity in only a small number of North Carolina counties.

Therefore, although Wake County's race-neutral school assignment policy has been successful *in Wake County*, it will predictably lead to racially diverse schools only in districts that share the demographic trends present in Wake County.

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[9] The data discussed below is derived from an analysis of Census Bureau's data from North Carolina's 100 counties. UNITED STATES CENSUS BUREAU, Census 2000 Summary File 3 (SF 3), at http://www.census.gov (last visited Oct. 6, 2006).

III. Wake County's Success Cannot be Generalized Categorically

The discussion in Part II, *supra*, highlights why it is irresponsible to compare the assignment plans of other school districts to that of Wake County without considering the specific demographic features of the other school district as well as taking into account whether that district is attempting to foster racial diversity through its school assignment plan.

Even with demographic factors that tend to link racial diversity to socio-economic diversity, Wake County has experienced a decline in racial diversity since it adopted a race-neutral assignment policy. It is reasonable to expect that most school districts, in which the distribution of poverty does not fall so heavily along racial lines, would experience even less success achieving racial diversity through the use of a plan based on family income. School districts desiring actively to promote racial diversity through their school assignment policies would simply be unable to achieve that goal if forced to adopt a race-neutral plan similar to Wake County's.

In sum, the racial diversity of Wake County's schools, which has actually *declined* under the race-neutral plan, is not likely to be replicated under a similar plan in the vast majority of school districts, and therefore such plans do not offer a viable option for school districts that, unlike Wake County, desire to actively promote racial diversity through school assignments.

CONCLUSION

For the foregoing reasons, the decision below should be affirmed.

Respectfully Submitted,

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